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Delaware Superior Court
of Santa Clara County
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SANTA CLARA

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12 AGILENT TECHNOLOGIES, INC., a
Delaware Corporation,

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Plaintiff,

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v.

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16 TWIST BIOSCIENCE CORP., a Delaware
Corporation; EMILY LEPROUST, an
Individual; and DOES 1 through 20, inclusive,

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Defendants.

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Case No. **16CV291137**

Case No.

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) BREACH OF THE DUTY OF LOYALTY; AND
- (3) MISAPPROPRIATION OF TRADE SECRETS

JURY DEMANDED

BY FAX

1 Agilent Technologies, Inc. (“Agilent”), by and through its undersigned counsel, for their
2 claims for relief against Twist Bioscience Corporation (“Twist”), Emily LeProust (“LeProust”),
3 and Does 1 through 20 (collectively, “Defendants”), avers on knowledge as to itself and its own
4 acts, and on information and belief as to all other matters, as follows:

5 **NATURE OF DISPUTE**

6 1. Emily LeProust is a scientist who, in a premeditated plan, stole industry-leading
7 genomics technology from her longtime employer, Agilent Technologies, to start her own
8 competitive company, Twist Bioscience. Agilent’s genomics technology is critical to the
9 research and development of life-saving drugs, medical diagnostics, and fundamental molecular
10 biology research. LeProust’s primary job duty at Agilent was to develop and improve existing
11 Agilent DNA oligonucleotide (“oligo”) synthesis technologies to meet a burgeoning demand for
12 applications of these technologies, including assembling oligos into large, high-quality genes. In
13 violation of her duties to faithfully assist Agilent in improving its already industry-leading
14 technology, LeProust secretly laid the groundwork for a theft of Agilent technology, beginning on
15 or before February 2012—more than one year before she resigned from Agilent. That month, she
16 registered internet domain names for Twist. For the next fourteen months, LeProust remained at
17 Agilent and continued to use Agilent’s resources, people, and proprietary information to develop
18 and perfect the technology that Twist now touts as industry leading. During that time, LeProust
19 even pitched her competing company to venture capitalists—all while still an Agilent
20 employee. After leaving Agilent, LeProust then targeted and poached key employees with the
21 skills and knowledge of Agilent’s trade secrets, proprietary instruments, and methods necessary
22 to synthesize high-quality oligos and collections of oligos (“oligo libraries”) of a length,
23 complexity, and fidelity previously unmatched by any company other than Agilent. In carrying
24 out this plan, LeProust repeatedly breached her contractual duties, which required that she
25 disclose and assign to Agilent all technological innovations relating to Agilent’s research or
26 business, protect all Agilent confidential information, and refrain from recruiting Agilent
27 employees for a period of two years after departing the company.

1 2. Twist now threatens Agilent’s hard-earned technological and competitive
2 advantage, not because of any profound innovation by Twist, but because it planned and executed
3 a wide-ranging misappropriation of Agilent trade secrets, confidential information, proprietary
4 processes, and key personnel. The intellectual property and know-how stolen by LeProust and
5 Twist make up the leading edge of oligo-synthesis technology that took more than twenty years,
6 tens of millions of dollars, and the work of a large, interdisciplinary team of Agilent scientists and
7 engineers to develop.¹ The result is a well-funded Twist that is built on the back of Agilent’s
8 intellectual property and know-how. Twist thus has an ill-gotten, illegitimate, and unearned head
9 start in the market. Agilent brings this action to enjoin Twist from utilizing Agilent’s trade
10 secrets and confidential information, to recover the misappropriated intellectual property and
11 technology that contractually should have been disclosed and assigned to Agilent, and to collect
12 damages incurred as a result of LeProust’s repeated contractual breaches, raiding of employees,
13 and misappropriation of Agilent technology and processes.

14 3. In early 2012, Agilent authorized LeProust—by then director of research and
15 development of Applications and Chemistry in Agilent’s Genomics business—to research and
16 develop methods of assembling genes from synthesized oligos quickly and accurately, to enable
17 Agilent to meet a growing demand for faster, more affordable access to large quantities of
18 custom-made genes. But LeProust had her own intentions of meeting this demand in the several-
19 hundred-million-dollar, gene-assembly market. Her plans involved stealing Agilent trade secrets
20 and using them to create her own competitive company, Twist. She registered domain names for
21 Twist in February 2012. Rather than leave Agilent, LeProust stayed *an additional fourteen*
22 *months.*

23 4. During this entire timeframe, she remained under the directive to improve and
24 create new applications for Agilent’s oligo-synthesis technology. But she did not present them to
25 Agilent, to whom LeProust was contractually obligated to disclose and assign exactly such
26 inventions and discoveries. Instead, she pitched the ideas she developed as an Agilent employee

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28 ¹ Agilent was spun off from Hewlett-Packard in 1999.

1 to venture capital firms in March 2013, *while still an Agilent employee*. The pitch was to use
2 Agilent trade secrets, confidential information, and employees to start a competitive company.

3 5. Shortly after pitching these ideas to venture capitalists, LeProust abruptly resigned
4 in April 2013, refusing upon her exit to affirm her contractual obligations to protect Agilent's
5 confidential information, to acknowledge Agilent's ownership of the developments conceived by
6 her during and related to her Agilent employment, and to refrain from soliciting or recruiting
7 Agilent's employees. She also wiped clean her Agilent smartphone of any data and removed the
8 smart card upon returning it to Agilent.

9 6. The Agilent-owned developments LeProust pitched to venture capital firms were
10 so mature and valuable that less than three months after her departure, Twist had secured nearly
11 \$5 million in funding from at least fourteen investors. These developments also were
12 fundamentally based on underlying, confidential oligo-synthesis methodologies developed during
13 twenty years of research, trial-and-error, and substantial capital and manpower investment at
14 Agilent. Among these technologies is Agilent's proprietary method of oligo synthesis based on
15 industrial-scale inkjet technologies and unique quality-control processes. Through its
16 oligo-synthesis technology, Agilent produces the highest-quality long DNA strands among all
17 commercially available sources.

18 7. Agilent's oligo library synthesis technologies marry Agilent trade secrets in
19 mechanics, chemistry, biology, and other disciplines—including the physical, proprietary
20 machines (that exist only at Agilent) used to synthesize the oligos, the trade secrets inherent in the
21 composition of the phosphoramidite solution ("ink") used in synthesis, and all of the trade secrets
22 associated with the positive and negative experimental results in producing oligos. The result of
23 these twenty-plus years of work by a large team of chemical engineers, fluidics engineers, organic
24 chemists, mechanical engineers, and electric engineers at Agilent is a custom "million-feature,"
25 array-writing technology capable of synthesizing long (*i.e.*, greater than 200 nucleotides) oligos at
26 an extremely high density with minimal loss of accuracy. Essential aspects of this proprietary
27 process have never been publicly disclosed, are trade secrets, and are subject to Agilent's efforts
28 to protect confidential information.

1 8. The gene-assembly developments pitched by Twist—which LeProust learned as an
2 Agilent employee under a duty to assign such developments to Agilent—involve synthesizing
3 oligos (which, when assembled, comprise a gene) on a surface almost 100 times smaller than
4 what is typically used. In order to assemble genes on such a small surface, Twist must first
5 synthesize long oligos with feature sizes measuring about 30 microns in diameter and spaced only
6 about 50 microns apart. Twist disclosed aspects of this technology in its own patent applications,
7 which claim priority to provisional patent applications that were filed only five months after
8 LeProust’s departure from Agilent. Twist’s applications also disclosed the use of particular
9 mixed silane surfaces and described silane ratios developed and optimized at Agilent. Twist did
10 not and could not have independently developed the technology to synthesize oligos at this size
11 and density in its two years of existence—much less in the three months it took to obtain millions
12 of dollars in funding. It needed Agilent’s trade secrets and confidential information to do so.

13 9. For example, Twist needed to determine and optimize the appropriate synthesis
14 environment; perform quality-analysis and quality-control of the resulting oligos; optimize
15 combinations of ink and inkjet-head parameters; determine effective combinations of methods
16 and reagents; and optimize flowcell designs. It is evident from the materials distributed by Twist
17 to investors that Twist is using Agilent’s state-of-the-art printing processes and trade secrets to
18 bring Twist’s products to market at a higher volume, faster pace, and lower price than could ever
19 have been possible without the theft.

20 10. To help recreate these technologies for Twist’s benefit, and in violation of
21 LeProust’s contractual obligations not to recruit Agilent employees for two years, LeProust and
22 Twist recruited and hired 10 of LeProust’s former Agilent colleagues—including key members of
23 Agilent’s oligo writer and chemistry group. Collectively, these colleagues have full access to and
24 command of the fruits of Agilent’s twenty-plus years of investment in its interdisciplinary
25 approach to oligo synthesis; had worked more than 100 years at Agilent; and were the *key*
26 employees needed to utilize and implement Agilent’s stolen technology.

27 11. Based on information available to date, the confidential information that Twist
28 misappropriated from Agilent includes the synthesis environment to implement anhydrous

1 conditions and accurate placement of synthesis reagents (such as optimization of conditions, dry
2 nitrogen flow, and reducing static charge); quality-analysis and quality-control methods
3 (including LC-MS- and Next Generation Sequencing-based methods); optimized combination of
4 ink and inkjet-head parameters (including the composition, viscosity, inkjet type, head speed, and
5 distance from substrate); the gene-assembly technologies LeProust developed at Agilent,
6 including optimized combinations and reagents that LeProust is believed to have developed,
7 hidden, and diverted for use at or for Twist; and details of flowcell design (such as optimization
8 of flowcell backing material, flowcell-filling mechanism, and flowcell drainage to minimize
9 residual acid).

10 12. Through her actions, LeProust breached her agreements with Agilent and breached
11 her duty of loyalty to Agilent. LeProust and Twist also have misappropriated Agilent's trade
12 secrets in violation of California Civil Code §§ 3426 *et seq.* Agilent seeks to enjoin the use by
13 Twist and/or LeProust of any Agilent trade secrets, confidential information, and proprietary
14 developments; to recover its misappropriated trade secrets, confidential information, and
15 proprietary developments; to enjoin Defendants from obtaining or enjoying any further
16 commercial advantage from their misappropriation of this information; and to recover actual and
17 punitive damages.

18 THE PARTIES

19 13. Plaintiff Agilent Technologies, Inc., is a Delaware corporation with its principal
20 place of business in Santa Clara, California.

21 14. Defendant Twist Bioscience Corporation is a Delaware corporation with its
22 principal place of business in San Francisco, California.

23 15. Defendant Emily LeProust is a resident of the State of California.

24 16. Agilent is unaware of the true names and capacities of the Defendants sued herein
25 as DOES 1 through 20, and therefore sues these Defendants by such fictitious names. Agilent is
26 informed and believes, and on that basis alleges, that each of such fictitiously named Defendants
27 was acting as the agent, partner, or joint venturer of the other Defendants and is jointly and
28 severally responsible for the acts and omissions alleged herein.

1 17. A substantial part of the events giving rise to Agilent's causes of action as alleged
2 herein occurred in Santa Clara County, California, and have a direct effect on Agilent in Santa
3 Clara County, California. Agilent is informed and believes and thereon alleges that the actions
4 causing injury to Agilent as alleged herein, even if initiated outside of California, were expressly
5 aimed at California, with knowledge that they would cause harm in California.

6 **JURISDICTION AND VENUE**

7 18. This action arises under the laws of the State of California and is within the subject
8 matter jurisdiction of this Court. Further, Defendants are subject to the personal jurisdiction of
9 this Court because they conduct business in and/or are residents of California.

10 19. Pursuant to California Code of Civil Procedure sections 395 *et seq.*, venue is
11 proper in the Superior Court of the State of California in and for the County of Santa Clara
12 because the contracts at issue were breached in the County of Santa Clara, State of California, and
13 because Agilent was harmed in the County of Santa Clara, State of California.

14 **GENERAL ALLEGATIONS**

15 **Agilent's Business**

16 20. Agilent is a world-leading research, development, and manufacturing company
17 whose laboratory products and services target the food, environmental and forensics,
18 pharmaceutical, diagnostics, chemical and energy, and research markets, among others. Agilent's
19 solutions enable its customers to address global trends that impact human health and the
20 environment, and to anticipate future scientific needs. Its innovative technologies provide
21 scientists and healthcare workers tools to fight cancer, improve quality of life, and enable new
22 discoveries.

23 21. Agilent has made enormous investments during the years in the research and
24 development of cutting-edge technology in order to remain an industry leader in discovering,
25 developing, and commercializing innovative technologies for DNA and ribonucleic acid ("RNA")
26 synthesis and measurement. These technologies have led to groundbreaking insights into the
27 human genome, enabling a deeper understanding and identification of developmental
28 abnormalities, cancer and its progression, susceptibility to disease, and differing responses to

1 treatment. Agilent has invested many millions of dollars and enormous amounts of time into the
2 research, development, design, and refinement of its first-in-class oligo-synthesis technology.

3 22. Agilent is an interdisciplinary organization whose approximately 12,000
4 employees bring expertise across many subject areas to foster innovation and new technologies.
5 Agilent Research Laboratories power Agilent's growth through groundbreaking science and
6 technology. Agilent Research Laboratories complement Agilent's product-line Research and
7 Development groups by looking beyond Agilent's current products and creating technologies for
8 future markets. Agilent develops, manufactures, and sells genomics-related products and services
9 through its Genomics business ("Genomics"). Agilent expends significant amounts of resources
10 in recruiting, interviewing, hiring, training, developing, and managing the performance of
11 talented employees throughout its workforce, including employees in Genomics and its
12 manufacturing, marketing, and sales organizations.

13 23. Due to the nature of Agilent's business, Agilent must protect its many valuable
14 trade secrets and other proprietary materials in its possession. Agilent uses a variety of controls
15 to regulate access to and disclosure of its data, communications, and proprietary information.
16 These include, but are not limited to: encrypting all data-storage devices containing sensitive
17 information; adopting security guidelines governing the connection of employees' personal
18 computing devices to Agilent's network; requiring employees to label data according to the level
19 of sensitivity; and requiring employees to flag all emails containing sensitive information as
20 "confidential," and to encrypt their attachments. Agilent requires every employee to execute an
21 agreement governing and protecting its confidential and proprietary information, and considers
22 such agreements to be vitally important to the protection of its business. Agilent also implements
23 physical security measures such as locked facilities and key cards, and electronic security
24 measures such as network protections and need-to-know access controls. Agilent further trains
25 employees on the importance of protecting confidential information, and protects its trade secrets
26 by entering into non-disclosure agreements with its customers and vendors. Agilent also holds
27 scores of patents covering various aspects of its technology.

28

1 LeProust Joins Agilent And Signs A Confidentiality & Assignment-Of-Invention Agreement

2 24. Agilent hired LeProust in 2000. Like other employees, LeProust was required to
3 sign, and did sign, an Agreement Regarding Confidential Information and Proprietary
4 Developments (“Confidentiality and Assignment Agreement”) as a condition to employment at
5 Agilent. Paragraph 2 of the Confidentiality and Assignment Agreement addresses the protection
6 of Agilent’s “Confidential Information,” and provides:

7 I agree: (a) to use such information only in the performance of Agilent duties; (b)
8 to hold such information in confidence and trust; and (c) to use all reasonable
9 precautions to assure that such information is not disclosed to unauthorized
10 persons or used in an unauthorized manner, both during and after my employment
with Agilent.

11 25. The Confidentiality and Assignment Agreement defines “Confidential
12 Information” as “trade secrets, confidential business and technical information, and know-how
13 not generally known to the public . . . which is acquired or produced by me in connection with my
14 employment by Agilent.” By way of illustration, but not limitation, the Confidentiality and
15 Assignment Agreement specifies that “Confidential Information” includes “information on
16 Agilent organizations, staffing, finance, information of employee performance, compensation of
17 others, research and development, manufacturing and marketing, as well as information which
18 Agilent receives from others under an obligation of confidentiality.”

19 26. Paragraph 3 of the Confidentiality and Assignment Agreement addresses the
20 disclosure and assignment of “Proprietary Developments,” and provides:

21 Such Proprietary Developments are the sole property of Agilent, and I agree: (a) to
22 disclose them promptly to Agilent; (b) to assign them to Agilent; and (c) to
23 execute all documents and cooperate with Agilent in all necessary activities to
24 obtain patent, copyright, mask works and/or trade secret protection in all countries,
at Agilent’s expense.

25 27. The Confidentiality and Assignment Agreement defines “Proprietary
26 Developments” as “inventions and discoveries (whether or not patentable), designs, works of
27 authorship, mask works, improvements, data, processes, computer programs and software . . . that
28 are conceived or made by me alone or with others while I am employed by Agilent and that relate

1 to the research and development or the business of Agilent, or that result from work performed by
2 me for Agilent.”

3 28. The Confidentiality and Assignment Agreement also makes clear that these
4 disclosure and assignment obligations apply equally to an invention “for which no equipment,
5 supplies, facility, or trade secret information of [Agilent] was used and which was developed
6 entirely on the employee’s own time” as long as “(a) the invention relates (i) to the business of
7 [Agilent], or (ii) to [Agilent’s] actual or demonstrably anticipated research or development, or (b)
8 the invention results from any work performed by the employee for [Agilent].”

9 29. Paragraph 7 of the Confidentiality and Assignment Agreement addresses non-
10 solicitation of Agilent employees, and provides: “I agree not to disrupt, damage or interfere with
11 the operation or business of Agilent by soliciting or recruiting its employees for myself or others,
12 both during my employment at Agilent and for a period of two years following termination of my
13 employment with Agilent.”

14 30. LeProust also was obligated to comply with Agilent’s Standards of Business
15 Conduct (“Standards”). The Standards obligated LeProust to refrain from “any outside work that
16 could lead to divided loyalties”; to refrain from “hav[ing] a personal or family financial interest in
17 any Agilent supplier, customer, reseller or competitor that might cause divided loyalty”; and to
18 “disclose any outside work for an Agilent competitor, customer, reseller or supplier, or any other
19 involvement that could cause divided loyalties, prior to engaging in any such activity.”

20 31. The Standards thus imposed strict restraints on LeProust’s involvement with
21 outside entities that could possibly encroach upon LeProust’s loyalty to Agilent.

22 **Agilent Develops Valuable Trade Secrets In Oligo Synthesis During LeProust’s Tenure**

23 32. Agilent has become the industry leader in producing high-accuracy, long oligos:
24 DNA or RNA molecules that have a wide range of applications in genetic testing, research, and
25 forensics. Through its oligo-synthesis technology, Agilent produces the highest-quality long
26 DNA strands among all commercially available sources.

27 33. Agilent’s oligo library synthesis technology is the result of more than twenty years
28 of interdisciplinary research, development, and trial-and-error. This technology marries Agilent

1 trade secrets in mechanics, chemistry, biology, and other disciplines—including the physical,
2 proprietary machines (that exist only at Agilent) used to synthesize the oligos; the composition of
3 the “ink” used in synthesis; and all of the knowledge of the environment, parameters, and
4 specifications that work best and most efficiently to accurately produce high-quality oligos, and
5 which to avoid.

6 34. Agilent hired LeProust to work on developing the chemical aspects of the inkjet
7 writer used for this high-density oligo synthesis. LeProust remained intimately involved in the
8 development and commercialization of Agilent’s inkjet writer technology throughout her entire
9 career there. By the end of LeProust’s thirteen-year tenure at Agilent, she directed the research
10 and development of Applications and Chemistry in Genomics, supervising a team of scientists
11 and engineers responsible for the development and implementation of oligo synthesis and oligo
12 library synthesis technology, and managing related technology collaborations between Agilent
13 and other industry leaders. As such, she enjoyed a position of trust and confidence at Agilent,
14 which gave her access to all aspects of Agilent’s oligo synthesis and other related proprietary
15 technology and intellectual property, as well as their commercial applications, opportunities, and
16 consumers.

17 **Agilent Entrusts LeProust With Developing Gene-Assembly Technology**
18 **While LeProust Covertly Exploits That Technology Through Twist**

19 35. In early 2012, Agilent investigated expanding the applications for its world-
20 leading oligo libraries to meet a burgeoning market in synthetic biology. There was a new
21 demand—from researchers across various industries—for fast and affordable access to large
22 quantities of custom-made genes, and Agilent wanted to meet it. Agilent was uniquely positioned
23 to do so as the leading producer of long oligos—the building blocks of genes. Entering this
24 market required building on Agilent’s oligo library synthesis technologies by developing
25 technology that could quickly, cheaply, and accurately assemble these oligos into genes
26 on-demand. During 2012, LeProust obtained approval for and initiated a project to research and
27 develop gene-assembly technologies through her Genomics group. At the same time, she
28 registered domain names and email addresses for Twist on February 4, 2012, without informing

1 Agilent of these actions. From this point (and likely earlier) until she resigned from Agilent on
2 April 12, 2013, LeProust developed her strategic plan for Twist—a company now directly
3 competing with Agilent and its partners in the market for oligo library synthesis and its
4 applications, including gene assembly, for several hundreds of millions of dollars in market share.
5 LeProust kept these plans secret from Agilent.

6 36. In February 2013, leaders in Agilent Research Laboratories, Genomics, marketing,
7 and other groups held meetings with Agilent's then-CEO, Bill Sullivan to discuss the merits of:
8 (1) investing in and working with Gen9, a Cambridge-based startup in the gene-assembly market,
9 or (2) building on Agilent's existing oligo library synthesis technology and new developments to
10 meet the demands of the gene-assembly market organically. On February 4, 2013, LeProust—
11 while still an Agilent employee and while continuing to use Agilent resources and have access to
12 its confidential information—filed articles of incorporation for Twist, which now competes
13 directly with Gen9 in this space.

14 37. Rather than contribute the Proprietary Developments she was obligated to disclose
15 and assign to Agilent, LeProust withheld from Agilent its own business opportunities and
16 technological developments. LeProust never disclosed to Agilent the existence of her plans for
17 Twist, despite her then-existing obligations to present the business opportunities that ultimately
18 grew into Twist.

19 38. Indeed, not only did LeProust fail to disclose her plans and developments for gene
20 assembly to Agilent, as was her obligation, she actively presented those opportunities to others
21 outside of Agilent to obtain funding for her new venture—while still an Agilent employee and
22 making use of Agilent resources and intellectual property. In February 2013, LeProust
23 approached a Gen9 senior executive and other Gen9 founders with an offer to sell them "Twist's"
24 technology. Gen9 recognized the technology in LeProust's presentation as Agilent's—provided
25 to Gen9 in confidence—and ended the meeting. And in March 2013, LeProust delivered
26 proposals for a gene-assembly system to several venture capital investors, including in
27 Cambridge, Massachusetts. LeProust was employed by Agilent during this time period and had
28

1 access to confidential and proprietary Agilent information regarding oligo synthesis and gene
2 assembly that was relevant to the concept she pitched to the venture capital firms.

3 39. In early April 2013, Agilent decided to partner with Gen9 by obtaining equity and
4 investing \$21 million in the company, and by providing Agilent oligo libraries to Gen9 as its
5 starting material for gene assembly. Access to Agilent's high-quality oligo libraries was an
6 important consideration for Gen9 in deciding to partner with Agilent.

7 **LeProust Leaves Agilent And Refuses To Acknowledge**
8 **Her Confidentiality, Assignment, And Non-Solicitation Obligations**

9 40. On April 12, 2013, LeProust abruptly left Agilent without notice, after several
10 days of skipping meetings and calling in "sick." She refused to sign Agilent's "Functional Exit
11 Interview Memo," which reminds departing employees of their obligations not to use or disclose
12 Agilent's confidential and proprietary information. Rather than state her true plans, LeProust said
13 she was leaving to work for a "sequencing company." And she refused to take with her, as
14 requested, the Confidentiality and Assignment Agreement, under which she was obligated to
15 refrain from using or disclosing—and to use all reasonable precautions to prevent—the
16 unauthorized disclosure of Agilent's trade secrets, confidential business and technical
17 information, and other valuable information not generally known to the public. Her refusal, of
18 course, did not in any way impact her contractual obligations under the Confidentiality and
19 Assignment Agreement, which LeProust signed on September 11, 2000, and which remained in
20 effect. LeProust then wiped the contents (and removed the smart card) of her Agilent-issued
21 smartphone before returning it to Agilent in order to ensure no tracks were left behind.

22 **LeProust Launches Twist With Proprietary Developments**
23 **And Trade Secrets That Belong To Agilent**

24 41. On July 1, 2013—less than *three months* after LeProust left Agilent—Twist
25 obtained \$4.7 million in Series A funding from fourteen investors. By May 2014—just thirteen
26 months after LeProust left Agilent—Twist had completed its \$9 million in Series A funding, *and*
27 \$26 million of Series B Funding, *and* obtained a \$5 million grant from the U.S. government's
28 Defense Advanced Research Projects Agency. LeProust also publicly stated that her early

1 fundraising efforts for Twist were a “lonely time,” affirming that they began long before her April
2 2013 departure from Agilent and July 1, 2013, disclosure of nearly \$5 million in Series A
3 funding.

4 42. While at Agilent, LeProust covertly designed Twist’s business to operate in the
5 same specialized market as Agilent and to compete directly with Agilent and Gen9, with products
6 incorporating the features LeProust was supposed to have been developing for and assigning to
7 Agilent.

8 43. Twist markets itself as possessing a new platform for gene assembly to meet the
9 demand for fast and affordable access to large quantities of custom-made genes. The linchpins of
10 this platform are: (1) the use of silicon plates (rather than glass) to address temperature-control
11 issues that arise during gene assembly; and (2) the use of “capping” or double-coupling steps
12 during the synthesis of longer oligos to reduce errors in gene assembly. These temperature-
13 control and error-reduction improvements were the subject of LeProust’s experiments at Agilent,
14 as part of Agilent’s efforts to enter the gene-assembly market. LeProust conducted some of these
15 experiments during the final fourteen months of her employment with Agilent, after forming
16 domain names for Twist. The solutions LeProust generated are trade secrets and Proprietary
17 Developments that belong to Agilent, not Twist. Twist also markets and sells high-quality oligo
18 libraries for a broad range of applications.

19 44. Agilent compensated LeProust to ensure its genomics products were at the
20 forefront of the field; LeProust was responsible for making constant improvements to this
21 technology during the many years she worked for Agilent. She was specifically tasked and
22 entrusted with developing technologies to permit Agilent to enter the very same market LeProust
23 formed a *new company* to serve—a company she planned and developed as an Agilent employee,
24 and for which she secured millions in funding within about 90 days of leaving Agilent. The
25 inventions, discoveries, and improvements that LeProust took to Twist are exactly the type of
26 Proprietary Developments she was required to disclose and assign to Agilent under the
27 Confidentiality and Assignment Agreement.

28

1 **LeProust Solicits Her Former Genomics Colleagues At Agilent**

2 45. Under the Confidentiality and Assignment Agreement, LeProust was obligated not
3 to solicit or recruit Agilent employees for a period of two years—until April 12, 2015. Yet,
4 LeProust recruited and hired Siyuan Chen away from Agilent in November 2013. Chen worked
5 in Genomics Research and Development as a nucleic acid chemist, and had intimate knowledge
6 of Agilent’s oligo library synthesis technology, including the most advanced developments,
7 which he helped create, as well as the gene assembly work LeProust was leading. Like LeProust,
8 Chen refused to sign the Functional Exit Interview Memo, which reminds departing employees of
9 their obligations not to use or disclose Agilent’s confidential and proprietary information. And,
10 like LeProust, Chen also had agreed to the obligations in the Confidentiality and Assignment
11 Agreement as a condition of his employment with Agilent.

12 46. In February 2014 and again in May 2014, Agilent demanded assurances from
13 LeProust that she did not recruit any Agilent employees in violation of the Confidentiality and
14 Assignment Agreement. Twist responded, but refused to provide such assurances.

15 47. LeProust also hired and likely recruited Joe Worrell and Mike Krause before the
16 expiration of her obligation not to solicit Agilent employees. Worrell and Krause similarly
17 possess intimate knowledge of Agilent’s related oligo-synthesis technologies.

18 48. Twist and LeProust hired seven other experienced Agilent employees during the
19 last year and a half: Mary Noe, Micah Hamady, Scott McCuine, Solange Glaize, Maria Celeste
20 Ramirez, Tara Hill, and Nick Howells. Twist hired these employees because of their intimate
21 knowledge of, experience with, and/or access to Agilent’s valuable oligo-synthesis technology as
22 well as their institutional knowledge of Agilent’s business plans and customer lists to
23 commercialize it. Collectively, these key employees also possessed oligo synthesis-related
24 expertise across subject areas and knew how to implement and bring to market Agilent’s
25 interdisciplinary approach to oligo synthesis. Twist’s Vice President of Sales and Marketing—
26 Patrick Finn—also is a former Agilent employee, who worked in Agilent’s Life Sciences
27 Business Development group.

1 **Twist Gains A Head Start Subsidized By Trade Secrets It Misappropriated From Agilent**

2 49. The technology presented in Twist's 2015 patent application and business
3 presentations was not and could not have been independently developed during Twist's short
4 existence to date. Instead, this technology makes use of Agilent's trade secrets in oligo synthesis.
5 By way of illustration only, Twist describes having refashioned the "plates" containing oligos for
6 gene assembly so that they contain approximately 10,000, rather than 96, wells—each containing
7 roughly 100 oligos. In order to assemble genes on such a small surface, Twist must first
8 synthesize oligos with feature sizes measuring fewer than about 30 microns in diameter and
9 spaced only about 50 microns apart. It has taken at least twenty years of largely unpublished,
10 interdisciplinary research and development, design, trial and error, and investment for Agilent to
11 develop the technology to synthesize oligos at this size and density. Twist also discloses the use
12 of particular silane surfaces and specific values for the ratio of the mixture of these silanes, which
13 are identical to the material and ratio that Agilent derived after many years of development and
14 optimization. Twist could not, and did not, independently develop this technology in two years—
15 much less in the few months it took to obtain funding—without making use of Agilent's trade
16 secrets.

17 50. Indeed, Twist filed two provisional U.S. patent applications on August 5, 2013,
18 only four months after Twist was founded and only five months after LeProust left Agilent.
19 These applications—Provisional Application Nos. 61/862,445 and 61/862,457—disclose
20 technology that Twist could not have developed during its short time of existence, such as
21 methods of synthesizing oligos on the substrate having a functionalized surface. The listed
22 inventors on these Provisional Applications are William Banyai and Bill Peck, Twist's co-
23 founders with LeProust—both of whom also were employed at another company (Complete
24 Genomics) until the spring of 2013. Peck, also a former Agilent employee (for nearly eight
25 years), served as the architect of two generations of Agilent's high density microarray
26 manufacturing platforms.

27 51. To help make use of this technology for its own benefit, Twist hired the employees
28 listed in Paragraphs 45 to 48 above.

1 work for an Agilent competitor, customer, reseller or supplier, or any other involvement that
2 could cause divided loyalties, prior to engaging in any such activity.”

3 58. Notwithstanding LeProust’s agreement to these terms, LeProust failed to disclose
4 to Agilent her strategic plans for improvements on and new applications for Agilent’s oligo-
5 synthesis technologies. LeProust also recruited and solicited one or more Agilent employees to
6 terminate their employment with Agilent within two years of LeProust’s resignation, and used
7 Agilent’s Confidential Information and Proprietary Developments in her new venture at Twist.

8 59. By her actions described hereinabove, and as described in paragraphs 1 through
9 58, inclusive, LeProust has materially breached her agreements with Agilent.

10 60. Agilent has performed all conditions, covenants, and promises required to be
11 performed by it with respect to its agreements with LeProust, except for those conditions,
12 covenants, and promises that have been excused by reason of LeProust’s breaches alleged herein.

13 61. As a direct and proximate result of LeProust’s material breaches of her agreements
14 with Agilent, Agilent has been damaged in a sum according to proof at the time of trial.

15 62. Unless and until Defendants are restrained from the actions described herein,
16 Agilent will continue to suffer great and irreparable harm for which monetary damages would be
17 an inadequate remedy. Agilent is, therefore, entitled to injunctive relief compelling LeProust to
18 disclose in writing and assign to Agilent all Proprietary Developments (including the strategic
19 plan she created for improving Agilent’s oligo-synthesis technology and its application to gene
20 assembly); restraining LeProust from using those Proprietary Developments for her own benefit;
21 and restraining LeProust from soliciting and/or inducing Agilent’s employees to terminate their
22 employment with Agilent for a further period of two years.

23 63. Agilent is entitled to have a constructive trust for its benefit imposed upon all
24 Agilent trade secrets and confidential business information disclosed or used by Defendants in
25 breach of LeProust’s obligations under agreements with Agilent, including the Confidentiality
26 and Assignment Agreement. Agilent is further entitled to have a constructive trust for its benefit
27 imposed upon all gains derived by Defendants from LeProust’s breach of her obligations under
28

1 the Confidentiality and Assignment Agreement, including, but not limited to, all profits of, equity
2 interests in, and/or increases in the value of equity interests in Twist derived therefrom.

3 **SECOND CAUSE OF ACTION**

4 **(Breach of Duty of Loyalty)**

5 **(Against LeProust)**

6 64. Agilent realleges and incorporates herein by reference each and every allegation
7 contained in paragraphs 1 through 63, inclusive, hereinabove.

8 65. By virtue of her employment with Agilent, LeProust owed a duty of loyalty to
9 Agilent.

10 66. In violation of her duty of loyalty to Agilent, LeProust took actions while she was
11 still employed by Agilent to divert business opportunities away from Agilent to a new entity she
12 created while employed at Agilent. LeProust failed to disclose her strategic plans for improving
13 Agilent's oligo-synthesis technology, and applying it to gene assembly, in violation of the
14 Confidentiality and Assignment Agreement and Standards. Moreover, she actively concealed
15 both those strategic plans and her efforts to solicit millions of dollars from venture capital firms to
16 form a competing company that would exploit those strategic plans for her own personal benefit.
17 Finally, LeProust's approach to Gen9—offering ideas and technology that belonged to Agilent—
18 was a clear breach of her duty of loyalty to Agilent.

19 67. LeProust willfully and intentionally failed to discharge her duties and
20 responsibilities as an Agilent employee.

21 68. As a direct and proximate result of the wrongful conduct of LeProust, Agilent has
22 suffered damages, and is entitled to recover such damages, in an amount to be proven at trial.
23 Agilent's damages for breach of the duty of loyalty include, but are not limited to, all
24 compensation paid by Agilent to LeProust during the period of time in which she was in breach of
25 her duty of loyalty.

26 69. Agilent also is entitled to have a constructive trust for its benefit imposed upon all
27 assets misappropriated by LeProust and all gains derived from LeProust's breach of the duty of
28

1 loyalty, including, but not limited to, any profits of, equity interests in, and/or increases in the
2 value of equity interests in Twist derived therefrom.

3 70. Because the actions of LeProust were both willful and malicious, Agilent also is
4 entitled to an award of punitive damages against LeProust.

5 **THIRD CAUSE OF ACTION**

6 **(Misappropriation In Violation of California Civil Code §§ 3426 *et seq.*)**

7 **(Against all Defendants)**

8 71. Agilent realleges each and every allegation set forth in paragraphs 1 through 70,
9 inclusive, and incorporates them herein by reference.

10 72. Agilent's trade secrets and confidential, proprietary materials include information
11 that derives independent economic value from not being generally known to the public or to other
12 persons who can obtain economic value from its disclosure or use. These trade secrets include,
13 but are not limited to, the synthesis environment to implement anhydrous conditions and accurate
14 placement of synthesis reagents (such as optimization of parameters, dry nitrogen flow, and
15 reducing static charge) and related confidential information about Agilent's oligo library
16 synthesis technology; the negative and positive research and trial and error leading to the
17 development of Agilent's oligo-synthesis technologies and ability to synthesize oligos with
18 feature sizes measuring about 30 microns in diameter and spaced only about 50 microns apart;
19 Agilent's proprietary quality-analysis and quality-control methods (including LC-MS- and Next
20 Generation Sequencing-based methods); Agilent's use of linker chemistry, including the selection
21 of certain linkers over others, and methods of eliminating linker fragments; the relationship
22 between the molecular density of active synthesis sites on the substrate surface and the final
23 molecular density of a synthesized oligo; Agilent's methods of controlling depurination and acid
24 deblocking; Agilent's optimized combination of ink and inkjet-head parameters (including the ink
25 composition, ink viscosity, inkjet type, head speed, and distance from substrate); test systems
26 Agilent designed for measuring and optimizing various synthesis parameters; the process of using
27 inkjet printers to synthesize oligos on glass or related surfaces, and the parameters and conditions
28 of that process; the gene-assembly technologies LeProust developed at Agilent (including

1 optimized combinations and reagents LeProust is believed to have developed, hidden, and
2 diverted for use at or for Twist); flowcell design (such as optimization of flowcell backing
3 material, flowcell-filling mechanism, and flowcell drainage to minimize residual acid); the design
4 of proprietary machines used to synthesize the oligos and specialized vendors needed to
5 implement that design; all of Agilent's confidential internal analyses of the gene-assembly
6 market, including confidential cost and pricing analyses and information; and information
7 regarding Agilent personnel with specific expertise and inside knowledge regarding Agilent's
8 oligo-synthesis technology and its applications. These technologies and information constitute
9 "trade secrets" under California Civil Code Section 3426.1. At all relevant times, Agilent owned
10 and does own these trade secrets.

11 73. These materials and information are the subject of reasonable efforts by Agilent to
12 maintain their secrecy. Agilent uses a variety of controls to regulate access to and disclosure of
13 its data, communications, and proprietary information. These include, but are not limited to:
14 encryption of all data-storage devices containing sensitive information; security guidelines
15 governing the connection of employees' personal computing devices to Agilent's network;
16 requiring employees to label data according to its level of sensitivity; and requiring employees to
17 mark all emails containing sensitive information as "confidential," and to encrypt their
18 attachments. As mentioned above, Agilent also requires every employee to execute an agreement
19 governing and protecting Agilent's confidential and proprietary information, and considers such
20 agreements to be vitally important to the protection of its business. Agilent also implements
21 physical security measures such as locked facilities and key cards, and electronic security
22 measures such as network protections and need-to-know access controls. Agilent further trains
23 employees on the importance of protecting confidential information. Agilent also protects its
24 trade secrets by entering into non-disclosure agreements with its customers and vendors.

25 74. In violation of California's Uniform Trade Secrets Act, Defendants willfully and
26 maliciously misappropriated Agilent's trade secrets through improper means. Among other
27 things, LeProust used her detailed knowledge as director of research and development of
28 Applications and Chemistry in Genomics, and the collective knowledge obtained from her

1 Genomics team members and from the members of Agilent's Research Laboratories, to exploit
2 years of trial and error and experimentation on the best processes for both creating and utilizing
3 Agilent equipment; to identify specific areas for improvement upon and new applications for
4 Agilent's existing oligo-synthesis technologies; to identify specific engineering solutions for
5 implementing those improvements and applications; and to identify specific Agilent personnel
6 with the inside knowledge necessary to accomplish those engineering solutions. Instead of
7 reporting these matters to Agilent, LeProust used this knowledge to solicit funding to create a
8 separate new company that would exploit this knowledge for her own benefit. Defendants have
9 used this knowledge to successfully induce key employees to leave Agilent to join Twist and are
10 using the trade-secret knowledge of those individuals and LeProust to build upon Agilent's oligo-
11 synthesis technologies in the creation of products on behalf of Twist. This includes Agilent's
12 oligo-synthesis technology and proprietary information necessary to synthesize oligos with
13 feature sizes measuring fewer than about 30 microns in diameter and spaced only about 50
14 microns apart. Defendants engaged in these acts with knowledge that the trade secrets belonged
15 to Agilent and that they were using improper means to acquire, use, and/or disclose those trade
16 secrets.

17 75. By reason of the above-alleged acts and conduct of Defendants, Agilent has been
18 damaged, and it will suffer great and irreparable harm and damage. The amount of this
19 irreparable harm will be difficult to ascertain, and Agilent will be without an adequate remedy at
20 law.

21 76. Agilent is entitled to injunctive relief restraining Defendants, their officers, agents,
22 employees, and all persons acting in concert with them, from using or disclosing Agilent's trade
23 secrets and restraining Defendants from obtaining any benefits from their wrongful use of
24 Agilent's trade secrets.

25 77. Agilent is further entitled to an order requiring Defendants, their employers,
26 agents, employees, and all persons acting in concert with them, to return to Agilent any and all of
27 its trade secrets and confidential, proprietary materials, including, but not limited to, any and all
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1 materials consisting of, incorporating, referencing, or derived from Agilent's trade secrets and
2 confidential, proprietary information.

3 78. Agilent is further entitled to recover from Defendants the actual damages sustained
4 by Agilent as a result of Defendants' wrongful acts described in this complaint. The amount of
5 such damages cannot be determined precisely at this time. Defendants' acts of misappropriation
6 were both willful and malicious, and Agilent is entitled to an award of punitive damages and
7 attorneys' fees against Defendants. Agilent is further entitled to recover from Defendants the
8 gains, profits, advantages, and unjust enrichment that they have obtained as a result of their
9 wrongful acts as described herein. Agilent is at present unable to ascertain the full extent of these
10 gains, profits, advantages, and unjust enrichment. In the alternative, Agilent is entitled to
11 reasonable royalties for the use of its trade secrets, in an amount that cannot be determined
12 precisely at this time.

13 79. Agilent is further entitled to have a constructive trust for its benefit imposed upon
14 all trade secrets misappropriated by Defendants, and all other gains derived from Defendants'
15 trade-secret misappropriation, including, but not limited to, all profits of, equity interests in,
16 and/or increases in the value of equity interests in Twist derived therefrom.

17
18 WHEREFORE, Agilent prays for judgment against Defendants as follows:


- 19 1. Injunctive relief restraining and enjoining Defendants from continuing the
20 wrongful acts and conduct set forth above, including, but not limited to, an injunction barring
21 Defendants from making any use of Agilent's oligo-synthesis technology and trade secrets, and of
22 any technologies LeProust developed or conceived of while employed by Agilent relating to
23 Agilent's research, including in gene assembly;
- 24 2. An order compelling Defendants to comply with their continuing obligations as set
25 forth above;
- 26 3. Compensatory damages in an amount to be proven at trial;
- 27 4. Repayment of all compensation received by LeProust from Agilent during the
28 period of time when she was in breach of her duty of loyalty;

- 1 5. Punitive and/or statutory exemplary damages;
- 2 6. The imposition of a constructive trust for the benefit of Defendants upon (a) all
- 3 assets misappropriated, converted, or used by one or more Defendants in violation of the
- 4 Confidentiality and Assignment Agreement or a duty of loyalty owed to Agilent, and (b) all gains,
- 5 including, but not limited to, any profits of, equity interests in, and/or increases in the value of
- 6 equity interests in, Twist, derived from breach of any agreements with Agilent, from breach of a
- 7 duty of loyalty owed to Agilent, or from any misappropriation of Agilent's trade secrets by
- 8 Defendants;
- 9 7. Reasonable attorneys' fees;
- 10 8. All costs of suit herein incurred; and
- 11 9. Such other and further relief as the court may deem proper.

12 Agilent hereby demands a trial by jury.

13 Dated: February 3, 2016

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18 Daniel M. Petrocelli
19 Attorneys for Plaintiff
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